THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.5095 of 2006

Dated: 27.07.2006

Between
1.S.Ashok and others.

.....Petitioners

and

1.Praga Tools Employees Cooperative Housing Society Limited, rep., by its President B.Balaraju, Kawadiguda, Secunderabad and others.

....Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.5095 of 2006

ORDER:

This writ petition is filed by the petitioners who are purported to be the members of the Praga Tools Employees Cooperative housing Society Limited, Kawadiguda, Secunderabad. In the affidavit filed in support of the writ petition, the petitioners have not revealed as to their status whether they are members of the Society or not.

The election notification dated 3.2.2005 was issued for conducting elections on 24.2.2005 to the 1st respondent-Praga Tools Employees Cooperative housing Society Limited, for the posts of President, and Managing Committee Members . The dates of the election schedule was given. This in fact was subject matter in the writ petition No. 3946 of 2005 before this Court. In that writ petition the memo dated 17.2.2005 issued by the 1st respondent was under challenge. While setting aside the impugned memo dated 17.2.2005 as well as the consequential notice dated 18.2.2005 the Election Officer was directed to proceed with the election process from the stage where it was stopped. Thus, a re-notification was issued on 10.3.2006 which is sought to be challenged in this writ petition.

There is no necessity to go into all the details. The main grievance of the petitioner is that there was an amendment to the Co-operative Societies Act by way of Act 6 of 2005 and the same

has come into force with effect from 31.1.2005. The amended law contemplates the election of the President directly by the members of the Managing Committee. Therefore, the act of the respondents in following the un-amended procedure is illegal.

In this regard, it may be necessary to notice the Order rendered by this Court in WPMP Nos.7598 and 10287 of 2006 in WP No.5095 of 2006, wherein it was held as under:

> "It is not in dispute that the above amendment carried out to Section 31 (5) of the Act by Act 6 of 2005 was received assent of the Governor on 28.3.2005 and was published on the even date, in effect, on the date when the impugned notification for election of the President to the first respondent-Society was issued, there was no amendment to Section 31 and hence, the elections, which were notified, have to be proceeded with as per the statutory provision, which was in force as on the date of issuance of notification but not by subsequent amendments. Once the election process has been stayed with the intervention of the Government, which has been set aside by this court in WP No.3946 of 2005 clarifying that the election has to be proceeded from the stage where it was stopped, it is incumbent that the President has to be elected directly by the members but not by the Managing Committee Members. In view of the same, prima facie the challenge in the writ petition that the election has to take place as per the amended provision is devoid of any merits. Hence, the Election Officer is directed to notify the result of the elections, but the same will be subject to the orders to be passed in the main writ petition. The WPMPs are ordered accordingly."

From the above, it is clear that the Act came into force only w.e.f 28.3.2005 and not before 31.1.2005 as contended by the learned counsel for the petitioner. Of course, the learned counsel for the petitioner states that the matter is under appeal and the appeal may come up for admission at any time. Therefore, the writ petiton may be adjourned for hearing, which is not acceptable.

In view of the above factual position, it is to be seen that

the amended Act 6 of 2005 came into force only w.e.f 28.3.2005 and the notification was issued on 3.2.2005. Even assuming that it is under the old law, it is not violative of any provisions of the Act. Apart from this, in the earlier writ petition as noticed above, this Court directed to continue the process of election where it was stopped. Therefore, any order passed in this writ petiton would amount to scuttling the order passed in the above writ petition, which attained finality and the same is not permissible. For all the above reasons, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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27.07.2006

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